IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.
WRIT PETITION NO. 2401 OF 2004

The Gul Bahar Co-operative Housing Society Ltd. ... Petitioner

Vs.

Mr. Arvind H. Shah & anr. ... Respondents

Mr. N.N. Bhadrashete for Petitioenr.

Mr. V.A. Thorat, Advocate General with Mr. S.A. Shah for Respondent No. 1.

CORAM : F.I. REBELLO,J.
DATED : SEPTEMBER 09, 2004
P.C. :

1. Rule. Heard forthwith.

2. On behalf of the petitioner, learned counsel contends that considering the sufficiency of the cause shown, the learned appellate court proceeded on the purported merits of the matter and dismissed the appeal preferred by the Petitioners herein. It is contended that from the order of the appellate court itself, it is clear that the appellant court did note that the society had changed earlier resolution. If that be the case, it is pointed out it will be for the cooperative appellate court to decide on examining the merits of the matter to consider the validity of the resolution or otherwise.

3. On the other hand, on behalf of the Respondents it is pointed out that the appellate court considering the material on record and the long passage of time, rightly rejected the appeal.

4. After having heard the learned counsel, I am of the considered opinion that the appellate court misdirected itself in deciding the issue of sufficiency of cause by considering the merits of the matter. It is true that in limited cases it is open to the appellate court to examine the matter on merits to find out whether delay should be condoned. It is not necessary to answer the said issue in the present case. Suffice it to say that there are rival contentions which require to be answered. In the light of that the judgement dated 23.4.2004 is set aside and the matter is remanded back to the Cooperative Appellate Court for deciding the matter afresh on the sufficiency of the cause shown after hearing the parties.

. Rule made absolute accordingly. No order as to costs.

(F.I. REBELLO,J.)